

appears upon the face of the bill, that the plaintiff is a non-resident of the State, or where it is shewn that the defendant, before he answers, knows that the plaintiff, who does not belong to the Army or Navy of the United States, resides beyond the jurisdiction of the Court, it is of course, on application, to compel him to give security. 1 *Fow. Exch. Pra.* 278; *Meliorouccy v. Meliorouccy*, 2 *Ves.* 24; *Dick.* 147; *Anonymous*, 10 *Ves.* 287; *Colebrook v. Jones*, *Dick.* 154. But if the defendant, being aware of the non-residence of the plaintiff, answers the bill or applies for time, security will not be required. *Craig v. Bolton*, 2 *Bro. C. C.* 609. If the plaintiff styles himself in his bill, of a place where he cannot be found, he must give security for costs. 2 *Fow. Exch. Pra.* 311; *Stackpoole v. O'Callaghan*, 1 *Ball. & Bea.* 566. (d) If the defendant, at the time of answering, be ignorant of the residency abroad, he may as soon as the fact comes to * his knowledge, obtain security; *Loneragan v. Rokeby*, *Dick.* 799; and the **564** same rule applies where the plaintiff after answer abandons the State and resides abroad. *Weeks v. Cole*, 14 *Ves.* 518. But if the defendant after being apprised of the fact, by an insufficient answer, or an answer filed by mistake, or by any proceeding in the case, recognizes the plaintiff's right to sue, he cannot obtain security for costs. *Dyott v. Dyott*, 1 *Mad. Rep.* 186. Nor will the plaintiff in a cross bill be required to give security for costs, though residing out of the jurisdiction of the Court. Where a *prochein ami* has taken the benefit of the insolvent law, or has been withdrawn and a new one appointed, security may be required for the costs already incurred. *Pennington v. Alvin*, 1 *Sim. & Stew.* 264. And where a plaintiff is out of the reach of the process of the Court by being under the protection of a foreign ambassador, he may be required to give security. *Adderly v. Smith*, *Dick.* 355. The simple fact of the plaintiff having gone abroad, is not a sufficient ground to require security, *Hoby v. Hitchcock*, 5 *Ves.* 699, it must appear that he has gone to reside abroad. *Green v. Charnock*, 3 *Bro. C. C.* 371; *Dick.* 775. If after answer, it appears by affidavit, that the plaintiff, though gone abroad, intends to return, his family remaining in this State, he will not be compelled to give security for costs. *White v. Greathead*, 15 *Ves.* 2. If there is a co-plaintiff residing within the jurisdiction, security will not be required

(d) *FISHER v. KAENE*.—The plaintiff's attorney being demanded by this Court if he would give security for costs, if, upon hearing of the business, the bill should be dismissed; and he refusing, the complainant having, at present, December, 1670, no visible estate in the Province: It was Ordered by this Court, that the complainant's said bill be dismissed; and that the said Fisher complainant, or Simon Warren his attorney, pay to the defendant the sum of three pounds six shillings and eight pence for costs; and that decree pass out of this Court for the same against the said Fisher, or his attorney Simon Warren.—*Chan. Proc. lib. C. D. fol.* 41.